JD–198–97
Augusta, ME

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TREE-FREE FIBER CO., LIMITED LIABILITY COMPANY

and Case No. 1-CA-34278

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO-CLC, AND ITS LOCALS 57 AND 82

Robert DeBonis, Esq., and John E. Arbab, Esq., of Boston, MA, for the General Counsel.
Jonathan S. R. Beal, Esq., of Portland, ME, for the Charging Party.
Charles S. Einsiedler, Jr. Esq., of Portland, ME, for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me at Augusta, Maine, on July 21, 22, 23, and 24, 1997, pursuant to an amended complaint issued by the Regional Director of the National Labor Relations Board (the Board) for Region 1 on April 4, 1997, and which is based upon an original and amended charge filed by United Paperworkers International Union, AFL-CIO-CLC, and its Locals 57 and 82 (the Union) on June 26, 1996[1] and March 27, 1997. The complaint alleges that Tree-Free Fiber Co., Limited Liability Company (the Respondent) has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Issues

(1) Whether Respondent is a successor to Statler Industries, Inc., (Statler) with respect to the facilities acquired by Respondent from Statler.

(2) If Respondent is a successor to Statler, whether Respondent unlawfully failed to negotiate and bargain with the Union as the exclusive collective bargaining representative of unit employees who had formerly been employed by Statler at those facilities and who had formerly been represented by the Union while working for Statler.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine witnesses, to argue orally and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and the Respondent.

[1] All dates are in 1996 unless otherwise indicated.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

Findings of Fact

I. Jurisdiction

The Respondent is a corporation engaged in the manufacture and recycling of tissue paper, with an office and place of business in Augusta, Maine, where in conducting its business operations, it annually sold and shipped goods valued in excess of $50,000 directly to points outside the State of Maine. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. *The Facts*

1. Background on Statler and Respondent

a. *Statler*

Statler operated a paper mill from 1968 to February 19, 1995, when it closed the mill and laid off the majority of its employees. Throughout this period it was party to a series of collective bargaining agreements (CBA) with the Union. After the shutdown, from April to August 1995, the parties attempted to negotiate a more "streamlined version" of the CBA. The negotiations were unsuccessful and the lead negotiators for the Union and Statler abandoned the process.

Statler was in the business of manufacturing consumer paper products and principally made napkins, facial tissue, toilet paper and paper towels. Most of their sales were made to private labels that were sold in grocery stores for purchase directly by the consumer. Statler operated three paper machines that produced 40 inch jumbo rolls of paper, the majority of which were sent to the converting section that made the above noted consumer products. A small percentage of the jumbo rolls were not converted to consumer products and were sold directly to independent outside converters.

On or about March 20, 1995, Statler filed a Chapter 11 bankruptcy petition.[2] On February 23, the Bankruptcy Court approved the sale of the mill to Respondent and it became final on April 10.[3] Thus, there was approximately a year hiatus from the shutdown of Statler until Respondent began operations..

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[2] The Union settled its claims in the bankruptcy proceeding for $2,030,000, and Statler employees received severance payments based on their length of service.

[3] Paragraph 7 of the sale agreement states in pertinent part that: " By acquiring the Assets, Tree-Free shall not be deemed to be a successor in interest to the Debtor, nor shall Tree-Free be deemed to assume any liabilities or obligations of the Debtor." (Respondent Exhibit No. 4)

b. *Respondent*

On April 10, Respondent purchased the assets of Statler for 10 million dollars that included the land, buildings, three paper machines and 11 lines of converting equipment.[4] When Respondent acquired the site, the original plan was to build a brand new 80 to 100 million dollar de-inking pulp facility. The business plan also called for operating one of the paper machines to produce jumbo rolls of paper to be sold directly to outside converters. Respondent did not intend to convert the jumbo rolls of paper into consumer products as did Statler. It was anticipated that Respondent could operate the paper machine while they were gearing up to build the new pulp facility with a positive cash flow. The business plan changed, however, as the worldwide price of pulp dropped dramatically and the decision to build the pulp facility was put on hold. Thus, it was decided to proceed with the production of jumbo rolls of paper and a capital investment of 2.3 million dollars was committed to upgrade paper machine # 3 and to improve the physical structure of the mill. To assist in raising this capital, Respondent sold Statler's converting equipment for 2 million dollars and derived additional funds from the salvage of paper machine # 1, after removing usable parts to support the possible reactivating of paper machine # 2.

2. Respondent's Officers and Supervisory Team

Samuel Posner, Respondent's President and a primary investor, was instrumental in completing the purchase of Statler. In March 1996, before the final purchase was approved by the Bankruptcy Court, Posner met with former Statler Paper Mill Manager Bob Jackson, Chief Engineer Brad Snow and Plant Controller Bill Perry. Shortly after this meeting, each of these individuals was hired to commence employment with Respondent on April 11, in the supervisory positions of Mill Manager, Manager of Pulp Prep and Corporate Controller.[5] Likewise, Richard McElhaney, the former WasteTreatment Plant Superintendent at Statler was hired on April 11, as Respondent's Director of Environmental Services and Kenneth Newman, a former Statler Forman was also hired on April 11. Newman, an admitted statutory supervisor, schedules the production on paper machine # 3, and purchases chemicals and materials for Respondent.

3. The Team Leader Positions

From the inception of its operation, Respondent consistently emphasized that it was a different company then Statler. As part of this process, it adopted the concept of self directed work teams headed by a team leader. The team leader is responsible for making sure the crew works safely, fills out accident reports, and must report any equipment failures. For approximately the first year of mill operation (June 1996 to May 1997), each work team assigned to paper machine # 3 was composed of six individuals. The positions for each work

[4] Respondent's operating agreement shows that Statler President Len Sugarman invested $50,000 in the purchase price with an option to invest an additional $150,000. Although Sugarman did not avail himself of this investment opportunity, he was employed by Respondent until September 1996, when he left to pursue other interests. During this period, Sugarman was paid a salary and reimbursed for expenses. Likewise, Paul Sugarman, the Chief Financial Officer of Statler, was employed in the same capacity at Respondent until August 1996. During his tenure, he was authorized to deposit and withdraw money from Respondent's bank account. Neither of the Sugarman's had any direct responsibilities in the day to day operations of Respondent.

[5] Snow and Perry continued as statutory supervisors until September 11 and December 10, when they ended their employment with Respondent.

team are comprised of the team leader, back tender, winder operator, assistant winder operator, utility operator and oiler stock handler. In approximately, May 1997, the oiler stock handler position was eliminated and since that time paper machine # 3 is operated with five individuals.

The Respondent opines that the team leader positions possess supervisory indicia while the General Counsel and the Union dispute this assertion. An analysis of this issue will be addressed later in the decision.

4. Statler Employees

On February 19, 1995, Statler ceased production and laid off the majority of its 500 production employees. Since the insurance companies required a physical presence on the property, a number of employees were retained on the Statler payroll after February 1995. For example, statutory supervisors Snow, Perry and McElhaney continued their employment through 1995 and early 1996 until they were hired by Respondent on April 11, and employee Claude Richard was retained throughout the same period because of his knowledge of the Statler sprinkler systems. He was hired by Respondent on April 11, as a team leader in the yard department.

The job classifications for paper machine # 3 at Statler included the machine tender, back tender, third, fourth and fifth end and the stock handler oiler position. According to Respondent's Team Leader Ted Danforth, who held the position of machine tender at Statler, the job descriptions at Respondent primarily follow the job descriptions at Statler with the duties of those positions being quite similar. While some additional duties were assumed by Respondent employees in the team leader and back tender positions, including quality control and taking care of minor maintenance problems, the responsibilities and duties are substantially similar and during the period from June 10 to May 1997, Respondent produced 40 inch jumbo rolls of paper as did Statler with the same complement of six employees operating paper machine # 3.

Pursuant to the CBA, Statler employees enjoyed health and life insurance and were enrolled in a pension plan. Respondent's employees have their fringe benefits specified in the Associate handbook (Respondent Exhibit No. 15). While some of these benefits are similar, their are a number of significant differences. For example, Statler did not give paid sick days and Respondent provides three paid sick days. At Respondent, if someone leaves early because they are sick, they will be paid for the remainder of the day. Such a benefit was not available at Statler.

Statler employees punched a time clock, while employees at Respondent give their hours to the team leader who reviews and approves the timesheets for all employees on their team. Statler employees were required to park outside the mill premises while Respondent employees are permitted to park inside the mill entrance adjacent to their work areas.

Despite a number of differences in personnel policies and work procedures, Respondent Supervisor Kenneth Newman testified that Statler and Respondent are similar in a number of respects. For example, Respondent uses some of the same vendors to purchase their materials and chemicals as did Statler, the boiler house that supported Statler is used by Respondent, the paper is weighed and shipped in the same manner, the pulp is prepared by employees in the same manner, the waste treatment facility that supported Statler is used by Respondent, both Statler and Respondent maintain yard crews, and both Statler and Respondent use clamp and forklift trucks and chain falls to move and load jumbo rolls.

5. Respondent's Employees

Before taking applications for employment, that began in March 1996, Respondent established its wages, hours and working conditions and conditioned all offers of employment upon acceptance of these working conditions. Respondent retained Lewis Scott in March 1996, to develop the employee handbook and coordinate the hiring process. After applications were received from newspaper solicitation, the applicants were initially screened by Scott and if qualified were referred to the hiring managers. Thereafter, the applicants were sent to the team leaders to find out whether they thought the individuals would make good employees. The team leaders then communicated with the hiring managers or Scott to give their input into the hiring process. Scott explained to the applicants that Respondent was different from Statler and would have a new seniority system, different rates of pay, a new benefit package and a new way of managing the organization. He told prospective employees that paper machine # 3 will be staffed by four teams working a twelve hour, three on/three off work schedule.

Respondent has a completely separate tax identification number, bank, bank account, telephone numbers, safety manuals, financial books, accountants and insurance policies from those of Statler.

On June 10, Respondent started the operation of paper machine # 3. Before that date, employees were involved in preparing the paper machine for operation and cleaning and painting the mill. Team Leader Danforth testified that he received no special training in the operation of paper machine # 3, primarily because he and the majority of other employees previously worked on the machine while employed at Statler. Of the approximately 50 employees on board on June 10, about 34 were formerly employed by Statler and were represented by the Union. This complement of employees remained constant between June 10 and June 1997, when Respondent commenced hiring in order to support the start up of paper machine # 2. Thus, at the time of the hearing, Respondent employed approximately 81 individuals including supervisors. Of these 81 employees, 23 are supervisors or administrative personnel including 10 team leaders that Respondent asserts are statutory supervisors. Of the remaining 58 production employees, about 38 were former Statler employees (Joint Exhibit No. 1).

6. Customers

While Statler had a larger list of customers then Respondent, Mill Manager Bob Jackson testified that a number of companies listed on Respondent's 1997 customer list were also customers of Statler during his tenure of employment from September 1993 to February 19, 1995 and April 1995 to April 10. Likewise, he verified that certain vendors on the customer list were also vendors of Statler.

7. Demand for Recognition and Results

On or about May 8, the Union requested that Respondent recognize it as the exclusive collective bargaining representative and bargain with it on behalf of Respondent's production and maintenance employees. The Union's May 8 letter was not received by Respondent until May 31, and by letter dated June 11, Respondent refused to bargain with or recognize the Union as the exclusive bargaining representative of its employees. As of May 8, Respondent does not dispute that a majority of its hourly production and maintenance employees were former employees of Statler. Respondent maintains however, that the team leaders in place on May 8 and thereafter are supervisors, and should be excluded from any collective bargaining

unit that may be found appropriate.

The Union seeks to represent a bargaining unit described as follows:

> All production and maintenance employees employed at the Respondent's existing Augusta, Maine facility, but excluding office clerical employees, salesmen, professional employees, guards, and supervisors as defined in the Act.

B. *Analysis and Conclusions*

1. Applicable Legal Principles

An employer succeeds to the collective bargaining obligations of a predecessor employer if (1) there is "substantial continuity" between the two employing enterprises: and (2) a majority of the successor's employees in an appropriate unit were also employed by the predecessor. *Capital Steel & Iron Co.,* 299 NLRB 484, 486 (1990). See also *CitiSteel USA,* 312 NLRB 815 (1993), enf. denied 53 F.3d 350 (D.C. Cir. 1995). In *Briggs Plumbingware v. NLRB,* 877 F.2d. 1282, 1285-1286 (6th Cir. 1989), the court pointed out that based on *NLRB v. Burns Security Services,* 406 U.S. 272, 280-281 (1972), and on *Fall River Dyeing Corp. v. NLRB,* 482 US. 27 (1987), the Board is required to conduct its "substantial continuity" analysis from the perspective of the employees who have been retained to determine "whether these employees . . . will understandably view their job situations as essentially unaltered." The court in *Briggs* goes on to explain that the successor determination is important because of the presumption that follows: that the union with which the predecessor bargained continues to enjoy majority status with the successor's employees. Id. at 1286.

In assessing the "substantial continuity" of the enterprise, the Board considers a number of factors: the degree of similarity in the nature of the two businesses, the extent to which the employees of the new company are performing the same jobs they did in their old jobs under the same conditions and supervisors, and the degree of similarity between the products, the production process and customers. *Fall River Dyeing, supra.* See also *Georgetown Stainless Mfg. Corp.,* 198 NLRB 234, 236 (1972), *Blitz Maintenance, Inc.,* 297 NLRB 1005, 1008 (1990).

Of all the factors bearing on successorship, perhaps the most important is a comparison of the workforce of the predecessor and the alleged successor; if a majority of the latter's employees had previously been employed by the former there is usually a successorship, where the bargaining unit of the predecessor remains appropriate. See *Control Services,* 319 NLRB 1195 (1995). In *Trident Seafoods,* 318 NLRB 738 (1995), the Board stated, "a mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness. The party challenging a historical unit bears the burden of showing that the unit is no longer appropriate [and] the evidentiary burden is a heavy one."

2. Factual Findings Regarding Successorship

a. *The Appropriateness of the Union's Demand for Recognition*

Respondent contends that because the Union's May 8 letter demanding recognition was authored by the International Union, and the parties' CBA recognizes the signatory locals as the sole collective bargaining agent for the employees, the demand for recognition is inappropriate and relieves the Respondent from any obligation to bargain with or recognize the Union.

The first CBA covering the period from September 1, 1968 to August 31, 1971 (General Counsel Exhibit No. 15), shows that the United Papermakers and Paperworkers, AFL-CIO and its Local No. 84, and the International Brotherhood of Pulp, Sulphite and Papermill Workers, AFL-CIO and its Augusta Local No. 57, were recognized by Statler as the sole collective bargaining agent for its employees. Thereafter, in or around 1972, the two International Unions merged and formed the United Paperworkers International Union. Local No. 84 changed its number to Local 82 but the two local unions did not agree to merge and continued as independent local unions representing their respective Statler production and maintenance employees. In the next CBA introduced in evidence covering the period from September 1, 1975 to August 31, 1977, the cover page reads: "Labor Agreement" between Statler Tissue Division of Statler Industries and The United Paperworkers International Union, AFL-CIO-CLC, and its Augusta Locals 82 and 57. (General Counsel Exhibit No. 14) The Preamble states that, "this agreement is made by and between the Augusta plant of Statler Tissue Div. of Statler Industries and the United Paperworkers International Union, AFL-CIO-CLC and its Augusta Locals No. 82 and 57." The CBA is signed by representatives of the International Union and the Locals. In Article 2, Recognition, it states in pertinent part: "The Company recognizes the signatory Locals as the sole collective bargaining agent for its employees in the work which properly comes under its jurisdiction."

During the period of time that the 1975 CBA was in effect, the Board issued on August 25, 1976, a Certification of Representative in Case No. 1-RC-14,604, to the United Paperworkers International Union, AFL-CIO (General Counsel Exhibit No. 16). That certification covered the pulp preparation quality control technicians, paper testers and paper inspectors employed at Statler's Augusta, Maine Mill. In each of the subsequent CBA through 1994 (General Counsel Exhibit Nos. 2, 10, 11, 12 and 13), the parties' "Labor Agreement" and "Preamble" language includes Statler and the United Paperworkers International Union, AFL-CIO-CLC and its Augusta Locals No. 82 and No. 57 and the CBA are signed by the International Union and the Locals. Likewise, the language contained in Article 2, Recognition, in each of the CBA shows that Statler agrees to recognize the signatory Locals as the sole collective bargaining agent for its employees in the work which properly comes under its jurisdiction including those employees as certified in NLRB Case No. 1-RC-14,604.

While I understand the argument advanced by Respondent that the Recognition clause in the CBA designates the signatory Locals as the sole collective bargaining agent for Statler employees, and the subject demand for recognition was initiated by the International Union, I am not persuaded that this undermines the Union's May 8 demand for recognition.

First, I note that the "Labor Agreement" and "Preamble" language contained in each of the former CBA shows that the agreement is made between Statler and the United Paperworkers International Union, AFL-CIO-CLC and its Augusta Locals No. 82 and No 57 and the International Union signed each of the CBA. Second, Article 4 in each of the former CBA entitled Adjustment of Disputes, contains provisions that provide for the International Union to

be specifically involved in settlement discussions at the last step of the grievance procedure prior to the matter being referred to Arbitration. Thus, it is evident, that Statler recognized the International Union as a party to the CBA. Moreover, International Union Representatives William Carver and Raymond Hinckley credibly testified that the International Union fully participated in consecutive collective bargaining negotiations with Statler representatives since 1975, and at all times served as the chief union spokesperson. This was confirmed by Respondent Mill Manager Bob Jackson and Respondent witness Craig Gray, who previously served as President of Local 57. Additionally, Statler representatives directly contacted the International Union to request a freeze in a negotiated wage increase for one year and informed the International Union that it was planning on building a waste treatment plant in advance of negotiations over the wages and hours of employees to be assigned to that facility. Third, in 1976, the Board certified the International Union as the exclusive collective bargaining representative for the pulp preparation quality control technicians, paper testers and paper inspectors employed at Statler and this certification is found in the Recognition clause for each of the parties' successive CBA through 1994.

Considering the forgoing, and particularly noting the 1976 Board certification of the International Union and the admission of Respondent witnesses that the International Union fully participated in the administration of the CBA and consecutive contract negotiations since 1975, I find that despite the language recognizing the signatory Locals as the sole collective bargaining agent, a long standing past practice developed between the parties which establishes that the International Union is the employees collective bargaining agent. Thus, I find that the evidence conclusively establishes that Statler consistently recognized the International Union as the exclusive collective bargaining representative of its production and maintenance employees. Therefore, I reject the Respondent's argument that the May 8 demand for recognition is not appropriate, privileging its refusal to recognize and negotiate with the Union over the employees terms and conditions of employment.[6] See *Vermont Marble Co.,* 301 NLRB 103 (1991).

b. *The Issue of Substantial Continuity*

The factors to look to in determining where there is substantial continuity were summarized by the Supreme Court in *Fall River, supra,* as follows:

> [W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and has basically the same body of customers.
>
> These factors are to be assessed primarily from the perspective of the employees. Thus, the question is "whether those employees who have been retained will view their job situations as essentially unaltered."

[6] I make this finding despite Respondent's reliance on the case of *Newell Porcelain Company,* 307 NLRB 877 (1992), aff'd *United Elec., Radio & Machine Workers of Amer. v. NLRB,* 986 F.2d 70 (4th Cir. 1993). In that case, unlike here, the Union representative did not make clear to the employer who was the appropriate collective bargaining representative. Thus, the Board and the Court of Appeals found that in the absence of a valid demand for recognition and bargaining, a violation of the Act cannot be found.

Respondent contends that it is not a successor because its business, after the purchase of assets from Statler, is entirely different in that it does not convert jumbo rolls of paper into consumer products. Contrary to this contention, I find that there is "substantial continuity" between the Statler operation and Respondent's.

First, it is apparent that Respondent is still in the same place performing the same basic operation as under Statler. Indeed, Respondent employees continue to make jumbo rolls of paper on the same paper machine previously used to produce those rolls at Statler. From the inception of Respondent's start up of paper machine # 3 on June 10, it continued to produce 40 inch jumbo rolls of paper with some of the same workers previously employed at Statler. This continued uninterrupted until May 1997, when Respondent upgraded paper machine # 3 to produce 60 inch jumbo rolls of paper but still retained the capability to produce 40 inch rolls of paper and did so for certain customers. Thus, for approximately a one year period, the same jumbo rolls using some of the same employees were produced on the identical machine used by Statler

Where a new employer "uses substantially the same facilities and work force to produce the same basic products for essentially the same customers in the same geographic area," it will be regarded as a successor. *Valley Nitrogen Products,* 207 NLRB 208 (1973). This proposition is in no way undermined by the upgrading of paper machine # 3. In this regard, the installation of the horizontal arm reel winder together with a bridge crane to make 60 inch jumbo rolls and the construction of an additional truck loading dock and warehouse was not completed until May 1997, a period approximately one year after the Union's demand for recognition. Therefore, I find from the employees perspective, Respondent was operating for a one year period substantially the same business enterprise as Statler. Other factors also support this conclusion.

First, while I note that there was a one year hiatus from the close of Statler's Mill until the purchase of those assets by Respondent on April 11, paper machine # 3 was fully operational two months later on June 10. Thus, unlike the Court of Appeals holding in *CitiSteel USA, supra,* that found a 2-year hiatus in production coupled with the transformation of a low-volume specialty steel mill into a high volume minimill defeated successorship, operations here commenced within two months of purchase and the mill continued to make jumbo rolls of paper on the same paper machine used by the predecessor.

Second, I find that while Respondent's employees began performing low level maintenance on paper machine # 3 that previously had been done by Statler employees in another department, such maintenance assignments did not significantly alter employees' job duties. Further, while the Respondent assigned employees the new task of identifying problems and participation in team meetings to propose alternatives to mitigate problems, there is no indication that this interfered with their normal work duties. Accordingly, even if Respondent made changes to employees' jobs after it started operations, which occurred after the Union had demanded recognition, I would find that such changes were not so great as to sever the substantial continuity between the Respondent's operation and that of Statler.

Third, I find that as of May 8, a majority of Respondent's production unit was employed by the predecessor. Moreover, even with the increased hiring undertaken in June and July 1997 to support the start up of paper machine # 2, the record still establishes that a majority of Respondent's production unit was previously employed by Statler.

The complement of supervisors also supports successorship. In this regard, even

before the Bankruptcy Court approved the sale of Statler's assets, Respondent's President Posner met with and subsequently hired Bob Jackson, William Perry and Brad Snow, all of whom held high level positions at Statler. Significantly, Bob Jackson held the position of Paper Mill Manager at Statler and was hired as Mill Manager for Respondent. Thus, he knew and previously supervised the majority of the production employees who were hired on or before June 10, and continue to work on Respondent's paper machine # 3. Soon thereafter, Respondent hired Richard McElhaney and Kenneth Newman to its supervisory complement, both of whom held managerial positions at Statler.

In summary, I find that the hiatus between the purchase of the assets and start up of the mill was minimal, the location remained the same, a number of the high level supervisors remained the same, a number of customers and vendors remained substantially the same, and finally, while the scale of Respondent's business and the products produced have been reduced from those which existed under Statler, the method of production of the jumbo rolls of tissue paper has remained essentially the same.

In light of the above, I find that Respondent is a successor to Statler, because the facts reflect "substantial continuity" between Respondent and Statler.

I further find that by failing to recognize and to bargain with the Union, Respondent has violated Section 8(a)(1) and (5) of the Act.[7]

3. The Team Leader Issue

The Respondent takes the position that the team leader positions possess supervisory indicia and should be excluded from any collective bargaining unit found to be appropriate herein.

Contrary to this argument, the General Counsel and the Union assert that Respondent's team leaders do not possess supervisory indicia and should be included in any appropriate collective bargaining unit.

Respondent's Human Resource Manager, Reiko Bennett, credibly testified that team leaders are involved in the hiring process. First, the core hiring team reviews the applications and conducts the initial applicant interviews. Thereafter, the team leaders meet with the applicants and give their recommendations to the core hiring team whether they think the applicants will make good employees. On occasions, after the interview, team leaders have recommended to the core hiring team not to hire an applicant and those recommendations have been followed. Bennett also testified that Respondent regularly has one hour weekly supervisory staff meetings and shift team leaders on duty must attend those meetings.

Respondent has two types of written discipline. The first consists of a verbal warning which is documented and the second step is a written reprimand. Bennett's signature must

[7] I make this finding despite Respondent's contention that the Bankruptcy Court determined that "By acquiring the Assets, Tree-Free shall not be deemed to be a successor in interest to the Debtor, nor shall Tree-Free be deemed to assume any liabilities or obligations of the Debtor. " (Respondent Exhibit No. 4, paragraph 7). In this regard, I conclude that the successor bargaining obligation incurred by Respondent is not a claim or debt that is dischargeable by a Bankruptcy Court or can be binding on the Board. See *Golden State Bottling Co. v. NLRB,* 414 U.S. 168, 184 (1973) and 11 U.S.C. Sec. 101 (5) and (12).

appear on both forms and the team leader must discuss the discipline with her before she signs the form. In the case of a verbal warning, Bennett signs the form after the document is given to the employee by the team leader. Team Leader Ted Danforth credibly testified that he recommended to Bennett that employee Benjamin Sack not be permitted to transfer to a day job and that this recommendation was followed. Likewise, Danforth on August 26, gave a written reprimand to employee Jeffrey Deschaine to document prior verbal warnings regarding unsafe work habits, inappropriate behavior and attitude and paper quality issues. In this warning, Danforth notes that after discussions with the mill manager and the human resources manager, it was decided to extend his probationary period another 90 days (Respondent Exhibit No. 8). Additionally, Danforth recommended to Supervisor Kenneth Newman that an employee receive three days off and he agreed with the recommendation.

Danforth also testified that he interviews prospective applicants for employment, is paid a higher hourly wage then members of his team and reviews and approves the weekly timesheets of all employees on the team. Danforth leads team meetings regarding safety and how to improve performance and has used his authority to let employees go home early. Team Leader Claude Richard credibly testified that he interviews prospective applicants for his yard team and then apprises the core hiring team whether he can use those applicants. Richard also conducts safety meetings and has met with a number of employees in his office to discuss safety issues. He documents these meetings and retains those notes in the employee's personnel file. Richard testified that he has the authority to let employees go home early and has exercised that authority. In this regard, Richard delegated certain responsibilities to an employee during a planned absence from the mill. The employee completed those duties in an exemplary manner and Richard gave the employee several hours off as a reward. Richard also reviews the hours worked for each of his team members and signs the weekly employee timesheets. Lastly, Richard credibly testified that he has the sole authority to assign and prioritize work for the yard crew. In this regard he must independently decide, among the numerous requests received for services of the yard crew, the priority for making and completing those work assignments.

Mill Manager Jackson credibly testified that the team leader in the pulp section can and has independently scheduled overtime for his team members.

Although Danforth and Richard testified that they normally work alongside their team members, the above testimony conclusively establishes that Respondent's team leaders exercise independent judgment rather then just making routine decisions. In this regard, team leaders effectively participate in the hiring process and recommend whether applicants should or should not be hired, they prepare and give written warnings to employees and can recommend more severe discipline, they are paid more then other team members, they review and sign employee timesheets, they can authorize employees time off, and they independently schedule overtime and attend weekly supervisory staff meetings.

Under these circumstances, I find that Respondent's team leaders are Section 2(11) supervisors under the Act and must be excluded from the below noted appropriate collective bargaining unit. *K.B.I. Security Services, Inc.* 318 NLRB 268 (1995).

Conclusions of Law

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent is a successor employer to Statler.

4. Respondent's team leaders are supervisors within the meaning of Section 2(11) of the Act and must be excluded from the unit set forth below.

5. Since May 8, the Union has been the exclusive collective bargaining representative of Respondent's employees in the following unit:

> All production and maintenance employees employed at Respondent's existing Augusta, Maine facility, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

6. Since May 8, Respondent has failed and refused to recognize and bargain with the Union in the unit set forth above, in violation of Section 8(a)(1) and (5) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Tree-Free Fiber Co., Limited Liability Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain collectively with the Union as the exclusive bargaining representative of its employees in the appropriate unit set forth below:

> All production and maintenance employees employed at Respondent's existing Augusta, Maine facility, but excluding office clerical employees salesman, professional employees, guards and supervisors as defined in the Act

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(2). Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and upon request bargain with the United Paperworkers International Union, AFL-CIO-CLC, and its Locals 57 and 82 as the exclusive collective bargaining representative of the employees employed in the unit described above.

(b) Within 14 days after service by the Region, post at its facility copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 26, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 25, 1997

_____
Bruce D. Rosenstein
Administrative Law Judge

[9] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

JD–198–97
Augusta, ME

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and bargain with United Paperworkers International Union, AFL-CIO-CLC, and its Locals 57 and 82 as the exclusive collective bargaining representative of the employees in the following appropriate unit with regard to wages, hours, working conditions, and other terms and conditions of employment:

All production and maintenance employees employed at Respondent's existing Augusta, Maine facility, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request, recognize and bargain collectively with United Paperworkers International Union, AFL-CIO-CLC, and its Locals 57 and 82 as the exclusive bargaining representative of the employees in the appropriate unit described above, with regard to their wages, hours, working conditions, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10 Causeway Street, 6th Floor, Boston, Massachusetts 02222–1072, Telephone 617–565–6701.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to recognize and bargain with United Paperworkers International Union, AFL-CIO-CLC, and its Locals 57 and 82 as the exclusive collective bargaining representative of the employees in the following appropriate unit with regard to wages, hours, working conditions, and other terms and conditions of employment:

All production and maintenance employees employed at Respondent's existing Augusta, Maine facility, but excluding office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request, recognize and bargain collectively with United Paperworkers International Union, AFL-CIO-CLC, and its Locals 57 and 82 as the exclusive bargaining representative of the employees in the appropriate unit described above, with regard to their wages, hours, working conditions, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

10 Causeway Street, 6th Floor, Boston, Massachusetts 02222–1072, Telephone 617–565–6701.